Supreme Court, U.S.
FILED
JAN 4 1983
ALEXANDER L. STEVAS
CLERK

No. 82-1022

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ALABAMA FURNITURE CO.,
Petitioner,

v.

C. KENNETH STILL, Trustee, and ULYSSES RIVERS, JR.,
Respondents.

On Petition for a Writ of Certiorari to the Sixth Circuit Court of Appeals

---

CONSUMER BANKERS ASSOCIATION, AND CREDIT UNION NATIONAL ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICI CURIAE, AND BRIEF OF AMICI CURIAE

Of Counsel:

BRUCE O. JOLLY, JR.
Credit Union National Association, Inc.
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 828-4500

DREW V. TIDWELL
Counsel of Record

MARYANN M. KASWELL
CONSUMERS BANKERS ASSOCIATION
1300 North 17th Street
Suite 1200
Arlington, Virginia 22209
Telephone: (703) 276-1750

RALPH J. ROHNER
Catholic University of America School of Law
Washington, D.C. 20064
Telephone: (202) 635-5140

Attorneys for Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

No. 82-1022

ALABAMA FURNITURE CO.,
Petitioner,

v.

C. KENNETH STILL, Trustee, and ULYSSES RIVERS, JR.,
Respondents.

On Petition for a Writ of Certiorari to the Sixth Circuit Court of Appeals

---

MOTION OF THE CONSUMER BANKERS ASSOCIATION, AND CREDIT UNION NATIONAL ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The Consumer Bankers Association, and Credit Union National Association, Inc., respectfully move, pursuant to Rule 36 of the Rules of this Court, for leave to file the attached brief as *amici curiae*. Respondent C. Kenneth Still has consented to the filing of such brief, and is in the process of preparing written consent. Respondent Ulysses Rivers, Jr., and the Petitioner have not, as yet, replied to our requests for consent. When written consents are received, they shall be promptly filed.

Movants are associations representing banks and credit unions whose members extend substantial amounts of consumer credit. The Petition for a Writ of Certiorari in this case raises substantial issues about the continued

operation of the federal bankruptcy laws. It thus directly affects movants, whose members have been and expect to be claimants in bankruptcy cases.

One or more of the movants have served as *amicus curiae* in other recent cases before this Court, *viz.*:

Fidelity Federal Savings and Loan Association v. de la Cuesta, —— S.Ct. —— (1982)

Ford Motor Credit Co. v. Cenance, 101 S.Ct. 2239 (1981)

Ford Motor Credit Co. v. Milhollin, 444 U.S. 555 (1980)

Marquette National Bank v. First of Omaha Service Corporation, 439 U.S. 299 (1978)

WHEREFORE, it is respectfully requested that the Court grant movants leave to file the attached brief as *amici curiae* in this case.

Respectfully submitted,

DREW V. TIDWELL
Counsel of Record

MARYANN M. KASWELL
CONSUMERS BANKERS ASSOCIATION
1300 North 17th Street
Suite 1200
Arlington, Virginia 22209
Telephone: (703) 276-1750

RALPH J. ROHNER
Catholic University of America School of Law
Washington, D.C. 20064
Telephone: (202) 635-5140

Attorneys for Amici Curiae

January 4, 1983

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
INTERESTS OF *AMICI CURIAE*	4
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. THE EXTRAORDINARY CIRCUMSTANCE OF A FAILURE OF CONGRESS TO CORRECT CONSTITUTIONAL DEFECTS IN THE BANKRUPTCY COURT SYSTEM IS CREATING VAST CONFUSION AND UNCERTAINTIES IN THE ADMINISTRATION OF THE BANKRUPTCY LAWS, WHICH JUSTIFIES THE EARLIEST POSSIBLE ACTION BY THIS COURT TO AFFIRM THAT BANKRUPTCY ADJUDICATIONS MAY CONTINUE	7
II. A SIMPLE AFFIRMANCE OF THE DISMISSAL BELOW, OR A REVIVAL OF THE 1898 BANKRUPTCY ACT, WOULD PROFOUNDLY AND UTTERLY FRUSTRATE THE INTENT OF CONGRESS IN ENACTING THE BANKRUPTCY REFORM ACT OF 1978 AND THIS COURT'S JUDGMENT IN *NORTHERN PIPELINE*	8
III. NEITHER THE BANKRUPTCY REFORM ACT OF 1978, NOR THIS COURT'S JUDGMENT IN *NORTHERN PIPELINE*, PRECLUDE THE CONTINUED ADMINISTRATION OF THAT ACT BY THE DISTRICT COURTS	11
A. The Holding in *Northern Pipeline* Does Not Operate to Revive the Bankruptcy Act of 1898	11

TABLE OF CONTENTS—Continued

Page

B. The Holding in *Northern Pipeline* Permits the District Courts to Administer the Substantive Corpus of Bankruptcy Law Under the 1978 Reform Act 14

IV. UNTIL CONGRESS ENACTS CORRECTIVE LEGISLATION, THE DISTRICT COURTS SHOULD BE AUTHORIZED TO ADMINISTER THE BANKRUPTCY LAWS IN THE MANNER RECOMMENDED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES 16

CONCLUSION 17

APPENDIX 1a

Memorandum, Administrative Office of the United States Courts, September 27, 1982 ..... 1a
Memorandum, Administrative Office of the United States Courts, December 3, 1982 ..... 4a
Interim Rule 7a
Memorandum, Administrative Office of the United States Courts, December 22, 1982 ..... 13a

TABLE OF AUTHORITIES

Cases: Page

Buckley v. *Valeo*, 424 U.S. 1 (1976) 10
Northern Pipeline Construction Co. v. *Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982) .....*passim*
United States v. *Security Industrial Bank*, 51 U.S.L.W. 3420 (U.S. Nov. 30, 1982) 10, 12

Statutes and Rules:

Bankruptcy Act of 1898, 30 Stat. 552 .....*passim*
Bankruptcy Reform Act of 1978, 92 Stat. 2549.....*passim*
Section 105 17
Section 241(a) 12, 14
Section 401 12
Sections 404-405 15
28 U.S.C. § 1471 .....10, 12, 14
Bankruptcy Rule 927 17
Fed. R. Civ. P. 53 15
Interim Rule (Admin. Off. of U.S. Courts) 10, 16, 17

Miscellaneous:

124 Congressional Record H11088 (daily ed. Sept. 28, 1978) 13
124 Congressional Record S17404 (daily ed. Oct. 6, 1978) 13
Consumer Bankruptcy Study, Credit Research Center, Purdue University (1982) 4
Hearings on Bankruptcy Reform Act of 1978, Subcommittee on Courts, Senate Committee on the Judiciary, 97th Cong., 1st Sess. (1982) 4
Memorandum, Administrative Office of the United States Courts, September 27, 1982 ..... 9, 16
Memorandum, Administrative Office of the United States Courts, December 3, 1982 .....9, 10, 15, 16, 17
Memorandum, Administrative Office of the United States Courts, December 22, 1982 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1022

ALABAMA FURNITURE CO.,
Petitioner,

v.

C. KENNETH STILL, Trustee, and ULYSSES RIVERS, JR.,
Respondents.

On Petition for a Writ of Certiorari to the Sixth Circuit Court of Appeals

---

BRIEF OF THE CONSUMER BANKERS ASSOCIATION, AND CREDIT UNION NATIONAL ASSOCIATION, INC., AS AMICI CURIAE

STATEMENT OF THE CASE

In the court below the bankruptcy petition of a consumer debtor was summarily dismissed on the ground that the "bankruptcy court" system created by the Bankruptcy Reform Act of 1978 violated Article III of the United States Constitution. The court below also refused to permit the case to continue under the prior Bankruptcy Act of 1898.

In this posture, the case brings to the Court, in direct and graphic form, the question whether—and how—the

federal bankruptcy system shall continue to function until such time as the Congress of the United States enacts legislation to restructure the machinery for bankruptcy administration consistent with this Court's mandate in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982). By denying the Solicitor General's application for a further stay of judgment in *Northern Pipeline*, the Court has released its mandate that the system of bankruptcy courts, as constituted under the Bankruptcy Reform Act of 1978 (the "1978 Reform Act") is unconstitutional. This seems unequivocally to mean that the bankruptcy laws cannot be administered through the court system designed by Congress in 1978. Congress has not enacted corrective legislation, and the bankruptcy system faces virtual anarchy.

The Court's holding in *Northern Pipeline* clearly contemplated that curative action would be taken by Congress to reconstruct the bankruptcy courts in a fashion consistent with constitutional dictates. It was for this reason only—to permit legislative correction "without impairing the interim administration of the bankruptcy laws"—that this Court stayed its judgment, first until October 4, 1982, and then by extension to December 24, 1982. Nothing in the Court's opinion in *Northern Pipeline* expressly addresses the consequences of Congress' failure to act. The Court, the parties to this litigation, and the nation therefore confront an extraordinary circumstance, where the continued administration of the bankruptcy laws is cast seriously in doubt.

The repercussions from a shut-down of the bankruptcy system will be vast, probably incalculable in dollar terms, and will be accompanied by the risk of irremediable injury to creditors, debtors and others, for whom the suspension of bankruptcy protections may mean financial disaster or human misery. State law machinery to assure orderly liquidation of debtors' estates simply does not exist on any scale that could substitute for the federal

bankruptcy system. While the leaders of both Houses of Congress have indicated their intent to place bankruptcy legislation high on the agenda in the 98th Congress,[1] there is no assurance that corrective legislation will be enacted soon, or indeed ever.

The case before the Court suggests two extreme scenarios. One is reflected in the rulings of the Bankruptcy Judge in the court below and is to the effect that, for lack of a constitutional court, no bankruptcy case can be administered under the 1978 Reform Act; if this holding is affirmed, presumably any bankruptcy cases pending or filed after the release of the stay in *Northern Pipeline* would be subject to peremptory dismissal. Another view is that urged by the Petitioner, namely that the constitutional flaw in the 1978 Reform Act so permeates the law that it must fall in its entirety, with the result that the earlier Bankruptcy Act of 1898 (repealed in 1978) revives; under this view, bankruptcy cases may proceed but would be governed both substantively and procedurally by the older law. For reasons detailed below, *Amici* concur with Petitioner that the case merits this Court's issuance of a writ of certiorari. But *Amici* submit that neither of the alternative dispositions just noted is appropriate or legally compelled. By its disposition of this case in any manner—whether by denial of the writ, or on the merits—this Court will send a strong and clear signal to the lower courts and to the public on a simple but compelling question: How, if at all, will the nation's bankruptcy system continue to function during the time before Congress legislatively cures the constitutional flaws in the 1978 Reform Act?

---

[1] The correspondence between the Acting Attorney General and congressional leaders was appended to the Application For A Further Stay of Judgment in the case of *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, submitted by the Solicitor General on December 22, 1982.

INTERESTS OF AMICI CURIAE

The Consumer Bankers Association (CBA) is a non-profit organization organized in 1919 to provide a voice for the retail banking industry. Since that time, the membership of CBA has grown to 500 commercial banks, of all sizes, which are actively engaged in extending consumer credit. Combined, the members of CBA hold over 70 percent of all consumer credit outstanding held by commercial banks.

The Credit Union National Association, Inc. (CUNA), is a non-profit membership association that represents the interests of 10,765 federally chartered and 7,780 state chartered credit unions through 52 state and area credit union leagues. The combined total of outstanding consumer loans at credit unions was $50.9 billion as of October 30, 1982.

Although *Amici* are not parties in this case, its resolution will unavoidably affect them in a number of ways, direct and indirect. Members of CBA and CUNA have had numerous consumer obligors seek relief from their debts under the 1978 Reform Act; each expects that additional consumer obligors will do so in the future. Each is therefore vitally interested both in the content of the bankruptcy laws and in the manner of their administration.

There is widespread agreement, supported by data, that the 1978 Reform Act measurably increased the protections for consumer debtors in bankruptcy and has contributed to the unprecedented rise in the number of bankruptcies. Hearings on Bankruptcy Reform Act of 1978, Subcommittee on Courts, Senate Committee on the Judiciary, 97th Cong., 1st Sess. (April 3, 6; October 29, 1981); Consumer Bankruptcy Study, Credit Research Center, Purdue Univ. (1982). Superficially, therefore, it would seem that creditors such as *Amici* would benefit from a suspension of all bankruptcy proceedings, or from a return to the halcyon rules of the Bankruptcy Act of

1898. It is true that, without the constraints of the 1978 Reform Act, creditors may be able to reduce credit losses by seeking collection remedies that would be denied them under that Act.

Amici do not view their long-term interests so narrowly, nor do we believe that the economic activity of the nation as a whole is well-served by an interregnum of bankruptcy cessation, chaos, or regression. Among the considerations that prompt *Amici* to urge the retention, in some administrable form, of the substantive corpus of the 1978 bankruptcy reform law are the following:

1. The 1978 Reform Act was a broad-sweeping reform of both the substantive law of bankruptcy and the procedures for administration of that law. As a consensus reform, its legitimate and constitutional aspects (which benefit creditors and debtors alike) should not be suspended or nullified.

2. *Amici* will be participating in the political processes of Congress in designing a constitutional bankruptcy court structure. As was the case in the 97th Congress, it is likely that *Amici*, and other consumer credit grantors. will also be urging Congress to make substantive amendments to the 1978 Reform Act to balance more fairly the positions of creditors and consumer debtors. We believe these amendments would more properly be grafted onto the stem of a viable 1978 Reform Act than considered in a setting of bankruptcy chaos.

3. Total suspension of the 1978 Reform Act, or revival of the Bankruptcy Law of 1898, would require creditors to overhaul or adjust their credit granting and collection practices during the interim period before Congress acts to cure the constitutional flaw in the 1978 law. This revision of procedures, and a further revision to adjust to a new regime when Congress does act, would involve confusion, inefficiency and operational burdens.

4. If the administration of the bankruptcy laws is completely suspended, there will be no mechanism to assure

the fair and equitable distribution of debtors' estates. Predatory practices among creditors may appear, practices that visit intolerable hardships on individual debtors and that disadvantage those creditors who seek to deal with their customers in a responsible and sympathetic manner. Likewise, a revival of the Bankruptcy Act of 1898 may encourage a revival of some of the unsavory practices permitted by that law, practices which the Congress and the industry had meant to relegate to history.

SUMMARY OF ARGUMENT

Amici submit that this Court's judgment in *Northern Pipeline* may and should be interpreted to permit the continued administration of the substantive corpus of the 1978 Reform Act, under the jurisdictional aegis of the district courts. The constitutional flaw in the 1978 Reform Act requires excision only of the "bankruptcy courts" as such, and does not preclude the exercise of residual jurisdiction by the district courts. Any other result would thoroughly frustrate the intentions of Congress and the expectations of this Court in *Northern Pipeline*.

Amici therefore urge this Court to reverse the order of dismissal in this case, and to remand it with instructions that the court shall proceed pursuant to rules which assure that the substantive provisions of the 1978 Reform Act are applied and that any matters requiring determination by an Article III court may be determined by the district court.

This disposition would avoid a finding either that the bankruptcy laws are wholly suspended until Congress acts, or that the expressly-repealed 1898 law is resurrected. It would provide a manner of systematic bankruptcy administration, albeit an imperfect one. The obvious cumbersomeness of district court supervision should continue to provide Congress with strong reasons for expeditious legislative cure.

ARGUMENT

I. THE EXTRAORDINARY CIRCUMSTANCE OF A FAILURE OF CONGRESS TO CORRECT CONSTITUTIONAL DEFECTS IN THE BANKRUPTCY COURT SYSTEM IS CREATING VAST CONFUSION AND UNCERTAINTIES IN THE ADMINISTRATION OF THE BANKRUPTCY LAWS, WHICH JUSTIFIES THE EARLIEST POSSIBLE ACTION BY THIS COURT TO AFFIRM THAT BANKRUPTCY ADJUDICATIONS MAY CONTINUE.

Amici are in full agreement with Petitioner that "this case presents an issue of exceptional public importance and urgency." With the release of the stay of mandate in *Northern Pipeline* on December 24, 1982, and without corrective legislation from Congress, all sense of certainty has disappeared from the administration of the bankruptcy laws.

The immediate consequences are already appearing. Neither creditors nor debtors are confident whether the "bankruptcy courts," or the district courts, have jurisdiction over bankruptcy cases or parts of such cases. Parties to cases before "bankruptcy judges" are seeking confirmation of every decision by the district court. It is probable, although there is no way to verify, that some debtors have refrained from filing bankruptcy petitions, or creditors have refrained from seeking relief or protections under the bankruptcy laws, because of the prospects of delay and expense in litigating jurisdictional issues.

At the suggestion of the Judicial Conference of the United States, most district courts have adopted interim rules to permit the continued handling of bankruptcy matters after December 24, 1982. These rules are certain to invite challenge, thus adding a whole new layer of litigable threshold issues. Such challenges may—in fact almost assuredly will—produce rulings by lower courts throughout the country on the constitutional adequacy of those interim rules. But it will be months, at

a minimum, before such a case will be ripe for review by this Court.

With Congress currently in adjournment, and with the many organizational matters that will necessarily occupy its attention when it reconvenes, there is also little likelihood that Congress will enact curative legislation soon.

Thus the nation confronts a situation that is unprecedented in this century: there is no clearly valid federal bankruptcy system, and no firm date for any judicial or legislative cure. This situation, we submit, presents a compelling need for this Court's intervention, through the vehicle of the pending case.

This case was initially decided by the bankruptcy judge prior to this Court's decision in *Northern Pipeline*. The judge's order of dismissal was stayed pending appeal, and proceedings in the Court of Appeals were stayed so that the Petition for a Writ of Certiorari could be submitted to this Court. Although not originally subject to the dilemma that now faces the bankruptcy system, this case must in any event be returned to the courts below for disposition of their stays. At that point this litigation is indistinguishable from cases filed after December 24, 1982, and would be subject to the interim rules adopted by the district courts on the recommendation of the Judicial Conference. We therefore submit that the present status of the bankruptcy laws is fully justiciable in this case.

II. A SIMPLE AFFIRMANCE OF THE DISMISSAL BELOW, OR A REVIVAL OF THE 1898 BANKRUPTCY ACT, WOULD PROFOUNDLY AND UTTERLY FRUSTRATE THE INTENT OF CONGRESS IN ENACTING THE 1978 REFORM ACT AND THIS COURT'S JUDGMENT IN *NORTHERN PIPELINE*.

The enactment of the 1978 Reform Act concluded a decade of comprehensive scholarly and legislative review of the weaknesses of the old Bankruptcy Act of 1898. The

entire movement was toward "reform" and modernization, both of the substantive corpus of bankruptcy law (Title 11 of the United States Code) and of the judicial and administrative machinery by which that corpus is implemented. The entire expectation of the Congress, manifest throughout the legislative history and debates, was that the bankruptcy laws would be continued in an improved and streamlined manner.

It simply confounds common sense and reality now to posit that because Congress unsuccessfully implemented part of its goal (the bankruptcy court system) the entire reform effort must be reshaped into either a suspension of all bankruptcy administrations or the regressive reinstitution of the rules of the 1898 Act. No outcomes could more egregiously pervert the overall intention, purpose and effect of the 1978 Reform Act.

Neither is there any basis for concluding that in the aftermath of *Northern Pipeline* Congress now prefers to see the bankruptcy system grind to a halt, or revert to the law of 1898. Since June 28, 1982 and prior to the expiration of the stay, both Houses of Congress invested considerable effort in attempts to solve the constitutional problem of bankruptcy procedure. The inability to legislate a cure is attributable to constraints of time, to "politics," and to disagreement over the *manner* in which the bankruptcy courts should be restructured. Legislative leaders have indicated their intention to continue the quest for a solution in the next Congress. Nowhere in all of this is the slightest support for a view that Congress meant the 1978 Reform Act to self-destruct.

Outside of Congress, the supervisory body for the federal courts concluded that the bankruptcy system could continue to function even if Congress did not act. The Administrative Office of the United States Courts, in memoranda circulated to the federal courts on September 27 and December 3, 1982, reported a resolution of the Judicial Conference of the United States which concluded

that *Northern Pipeline* "does not cause a jurisdictional lapse." To follow through on this conclusion, the Administrative Office recommended an interim Rule for the district courts, whereby bankruptcy cases could still be administered if (as has now happened) Congress did not act. That interim Rule calls for the district courts to supervise a careful allocation of bankruptcy administration between district court and bankruptcy judges to assure that constitutional requirements are met.[2]

The Court's judgment in *Northern Pipeline* does not contain any mandate for bankruptcy system collapse. The principles of separation of powers suggest that a judicial declaration of statutory invalidity should range no further than the Constitution compels. Thus, if a statute can be construed as constitutional the Court has generally indulged the permissible interpretation instead of the invalid one. The Court has preferred to settle statutory interpretation questions on non-constitutional grounds wherever possible. See, *e.g.*, *United States* v. *Security Industrial Bank*, 51 U.S.L.W. 3420 (U.S. Nov. 30, 1982). And when parts of a statute infringe the Constitution, the Court has generally sought the least intrusive sanction or remedy so as not to disrupt the legitimate prerogatives of the legislative branch. *Buckley* v. *Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

This approach permeates the judgment in *Northern Pipeline*. Three Justices, in dissent, would have resolved doubts altogether in favor of the constitutionality of the bankruptcy court provisions of the 1978 Reform Act.

---

[2] As early as September 10, 1982, the Judicial Conference of the United States advised Congress of its belief that *Northern Pipeline* "did not completely invalidate subsections (a) and (b) of section 1471 of the 1978 Act." Memorandum of Administrative Office of the United States Courts, December 3, 1982. Congress must also have been aware of the interim Rules promulgated in September and December. Congress thus had opportunity to express objection to the interim procedures suggested by the Judicial Conference, but to our knowledge has not done so in any manner.

Two other Justices, concurring, would have preferred that the Court's holding were limited to the narrow facts of the case. Even the plurality, which felt compelled to find that the bankruptcy court provisions of the 1978 Reform Act were constitutionally flawed, was reluctant to substitute its own impressions for Congress' intent. This reluctance ultimately led the Court to stay its judgment so that Congress' desires could be enacted.

Moreover, at the very outset of its opinion, after noting that the 1978 Reform Act made changes "in both the substantive and procedural law of bankruptcy," the plurality then observed: "It is the changes in the latter that are at issue in this case." 102 S.Ct. at 2862. This seems clearly to acknowledge that the corpus of the 1978 bankruptcy law is unaffected by the Court's holding. It would be anomalous in the extreme if the effect of the Court's judgment, lacking congressional cure, is to leave that corpus of bankruptcy law suspended, unmoored, incapable of application. It would be even more startling if those substantive portions of the 1978 Reform Act, left untouched by the *Northern Pipeline* judgment, were now found to be replaced by the once-dead rules of the 1898 law.

We therefore submit that the outcomes proposed by the Petitioner, or implied in the lower court's orders in this case, diverge fundamentally from any plausible expectation by Congress or this Court.

III. NEITHER THE 1978 REFORM ACT, NOR THIS COURT'S JUDGMENT IN *NORTHERN PIPELINE*, PRECLUDE THE CONTINUED ADMINISTRATION OF THAT ACT BY THE DISTRICT COURTS.

A. The holding in *Northern Pipeline* does not operate to revive the Bankruptcy Act of 1898.

The Petitioner sees a syllogism in the Court's judgment in *Northern Pipeline*: because the bankruptcy court structure is unconstitutional, and because that structure can-

not be severed from the Act as a whole, the entire Act must fall—including its repealer provision (§ 401); thus, the hoary 1898 Act "revives." We submit that the syllogism's minor premise is simply wrong, for the reason that *Northern Pipeline* requires no such conclusion.

First, nowhere in the *Northern Pipeline* decision is there any reference or allusion to the possibility that the constitutional defect in the bankruptcy court system affects the repealer provision at all. Such an inference is contradicted by the Court's own acknowledgement that only the "procedural" aspects of the 1978 Reform Act are at issue. Throughout this Court's opinion, the focus of its constitutional analysis is exclusively on § 241(a) of the 1978 Act (adding 28 U.S.C. § 1471) and incidental related provisions. There is no suggestion that Congress' curative legislation will need to reenact the entire law.

Nor does the comprehensive nature of the 1978 Reform Act dictate that it must be nullified in its entirety if its bankruptcy court provisions are inoperable. That segments of the Act are susceptible to independent evaluation and operation is implicit in this Court's judgment in *United States* v. *Security Industrial Bank*, 51 U.S.L.W. 3420 (U.S. Nov. 30, 1982).[3] While Congress clearly believed that the bankruptcy court structure was a major innovation in the new Act, and was aware of the possibility of constitutional challenge to the court structure, the legislative history does not support a con-

---

[3] The Court there held that, as a matter of statutory construction, § 522(f)(2) of the 1978 Reform Act did not invalidate security interests validly obtained before the enactment of that Act. We draw our inference from the Court's extended discussion of the possible Fifth Amendment challenge to § 522(f)(2), a discussion that would be largely superfluous unless that section—part of the substantive corpus of the 1978 Reform Act—operated independently of the bankruptcy courts provisions.

clusion that the entire Act should stand or fall on the strength of those provisions.[4]

Furthermore, the *Northern Pipeline* judgment in its entirety does not require that the whole Act stand or fall on the severability issue. Whatever implication may be drawn from the plurality's footnoted discussion (102 S.Ct. at 2880 n. 40) is counterbalanced by the clearly limited grounds for decision stated in the other opinions. Justices Rehnquist and O'Connor, concurring in the judgment, agree only that "this grant of authority [to entertain and decide state law claims] is not readily severable from the remaining grant of authority to Bankruptcy Courts under § 241(a). . . . ." 102 S.Ct. at 2882. The dissenting Justices explicitly state what they believe to be "the effective basis for today's decisions," 102 S.Ct. at 2883 n. 2, as follows:

> [N]on-Article III judges, regardless of whether they are labelled "adjuncts" to Article III courts or "Article I judges," may consider only controversies arising out of federal law. Because the immediate controversy in this case . . . arises out of state law, it may only be adjudicated, within the federal system, by an Article III court.

The lack of severability, in other words, was seen only in terms of the permissible and impermissible functions of the bankruptcy judges, and not in terms of vitiating the entire Act.

---

[4] It is notable in this regard that the final form of the bankruptcy court structure was not settled until the very end of the legislative consideration, and was a last minute compromise meant to elevate the status of the bankruptcy judges without giving them Article III tenure. Thus, Congressional leaders referred to the bankruptcy courts as "adjuncts." See, Remarks of Cong. Butler, 124 Cong. Rec. H 11088 (daily ed. Sept. 28, 1978); Remarks of Sen. DeConcini, 124 Cong. Rec. S 17404 (daily ed. Oct. 6, 1978) This belies any inference that the specific court provisions finally adopted were the cornerstone of the entire Act.

B. The holding in *Northern Pipeline* permits the district courts to administer the substantive corpus of bankruptcy law under the 1978 Reform Act.

We submit that the 1978 Reform Act in fact is severable, as a matter of constitutional construction, even though the Court chose not to delineate those lines with great precision and referred the jurisdictional matter back to Congress.[5] We urge this Court to acknowledge that bankruptcy cases may still be administered, so long as matters requiring Article III courts are not decided by non-Article III judges.

For example, 28 U.S.C. § 1471 (a) & (b) (as added by § 241(a) of the 1978 Reform Act) initially vests jurisdiction over bankruptcy cases in the district courts. The same section then goes on to specify that this jurisdictional authority of the district courts shall be exercised by the "bankruptcy courts." 28 U.S.C. § 1471(c). Congress thus directed a delegation of authority from the district courts to the bankruptcy courts, and it is this sub-allocation of judicial power that is necessarily unconstitutional under the Court's analysis. As a matter of semantics, however, if § 1471(c) is removed, the residual jurisdiction of the district court remains. As a matter of constitutional requirement, there is no reason why, with the offending subsection stricken, the district courts could not continue to exercise their nominal authority under the Act. This would be no more constitutionally offensive than was the practice prior to 1978, when the district courts were in fact the "bankruptcy courts," using "ref-

---

[5] We do not presume to advise the Court what it meant by its decision in *Northern Pipeline*. We believe the conclusions drawn here are fairly inferred from the Court's written opinions. If they are not, we ask the Court specifically to modify its *Northern Pipeline* holding in light of the unanticipated failure of Congress to act.

erees" (later "bankruptcy judges") for certain adjunct functions.[6]

Congress could apparently restore such a system, without constitutional invalidity. See *Northern Pipeline*, 102 S.Ct. at 2880 n. 40; Cf., *id* at 2882 (dissenting opinion of the Chief Justice). The district court's jurisdiction would encompass both the ministerial and "public law" matters arising directly from the bankruptcy laws, and through normal principles of pendent and ancillary jurisdiction could also include incidental or related matters of the type involved in *Northern Pipeline*. In such a system there would seem no constitutional obstacle if the district courts delegated or referred ministerial or "public law" matters to adjunct tribunals. Cf., Fed. R. Civ. P. 53.

If such legislation would be constitutionally permissible, and if the framework for just such a system remains in the 1978 Reform Act even after *Northern Pipeline*, we would urge this Court to recognize the authority of the district courts to proceed on that basis.

Certainly there is no inherent reason why the district court judges are incapable of performing the functions otherwise assigned by the 1978 Reform Act to the bankruptcy judges. The difficulty with having them do so is principally one of workload—it would burden the district judges with supervision over, and involvement in, many aspects of bankruptcy cases that were meant to be handled by the separate cadre of bankruptcy judges. These burdens, however, seem clearly preferable to a shut-down of the bankruptcy courts, and would offer a significant incentive to Congress to regularize a constitutional bankruptcy court structure.

---

[6] Alternatively, sections 404 and 405 of the 1978 Reform Act expressly vest bankruptcy powers in the *district* courts as "courts of bankruptcy" *until April 1, 1984* (i.e., during the transition period). As courts of bankruptcy, and as Article III courts, the district courts are therefore still fully empowered to administer the Act. Cf., Memorandum from the Administrative Office of the United States Courts, December 3, 1982.

IV. UNTIL CONGRESS ENACTS CORRECTIVE LEGISLATION, THE DISTRICT COURTS SHOULD BE AUTHORIZED TO ADMINISTER THE BANKRUPTCY LAWS IN THE MANNER RECOMMENDED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES.

Recognizing the authority of the district courts to administer the bankruptcy laws will prevent the complete shutdown of the bankruptcy system. But as a practical matter, that solution, alone, would mean that the district judges as a group would have to take on an additional load of half a million bankruptcy cases a year, while the more than 200 present "bankruptcy judges" would be constitutionally idled. The question then is whether, assuming the district courts have residual jurisdiction, portions of bankruptcy administration may be delegated by those courts to the "judges" of the bankruptcy courts.

As noted, under the prior Bankruptcy Act the district courts did delegate substantial bankruptcy authority to the "referees." Comparable delegations outside of bankruptcy have occurred through the widespread use of masters and magistrates. The line between delegable and non-delegable (Article III) powers of course must be observed, but with proper delineation a delegation of administrative powers to the bankruptcy courts is both pragmatically attractive and constitutionally sound.

The Judicial Conference of the United States has recommended an interim Rule for adoption and implementation by the district courts during the interval before Congress revises the 1978 Reform Act. The text of this interim Rule, and the accompanying memoranda from the Administrative Office are included in the Appendix to this brief. On information and belief, we understand that the substance of this Rule has been adopted in virtually all federal districts, including the Eastern District of Tennessee wherein this case arose. The Rule establishes a

system of referrals[7] by the district courts to the bankruptcy judges in order to "permit the bankruptcy system to continue without disruption." The Rule preserves to the district court full responsibility for matters requiring Article III judges, through a number of mechanisms: by permitting the district court to withdraw the reference (Rule § (c)(2)), by limiting the matters on which the bankruptcy judges may act (Rule § (d)(1)), by requiring district court review of certain matters (Rule § (d)(3)), and by permitting the bankruptcy judge to certify matters back to the district judge (Rule § (e)(3)).

The recommended interim Rule is obviously a "contingency approach" and falls measurably short of the streamlined system anticipated in the 1978 Reform Act. But we submit it assures a constitutional allocation of duties and, through application of the substantive corpus of the 1978 Reform Act, comes far closer to reflecting congressional desires than either suspension of all bankruptcy cases or the revival of the law of 1898.

Thus we urge the Court to rule that, pending congressional action, the district courts may proceed with bankruptcy administrations in the manner recommended by the Judicial Conference of the United States.

CONCLUSION

The nation, its people and its business, and its federal courts, face an extraordinary dilemma. This Court's decision in *Northern Pipeline*, coupled with the inability of Congress to legislate a restructuring of the bankruptcy court provisions of the 1978 Reform Act within the stay of mandate, threaten to close down or fundamentally disrupt the continued functioning of a national system of bankruptcy laws. Such results are neither consistent with

---

[7] The Administrative Office of the United States Courts, in its Memorandum of December 3, 1982, finds that such delegation is authorized by § 105 of the 1978 Act and by Bankruptcy Rule 927.

congressional will nor compelled by the holding in *Northern Pipeline*. A constitutionally valid alternative exists, which is to affirm that the *Northern Pipeline* judgment permits exercise of bankruptcy powers by the district judges, and then to permit properly circumscribed delegation of certain of those powers to the existing bankruptcy judges.

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted and the case should be remanded with instructions to reinstate it on the docket with any proceedings to be governed (pending Congressional action) by court rules substantially similar to those recommended by the Judicial Conference of the United States.

Respectfully submitted,

Of Counsel:

BRUCE O. JOLLY, JR.
Credit Union National Association, Inc.
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 828-4500

DREW V. TIDWELL
Counsel of Record

MARYANN M. KASWELL
CONSUMERS BANKERS ASSOCIATION
1300 North 17th Street
Suite 1200
Arlington, Virginia 22209
Telephone: (703) 276-1750

RALPH J. ROHNER
Catholic University of America School of Law
Washington, D.C. 20064
Telephone: (202) 635-5140

Attorneys for Amici Curiae

January 4, 1983

APPENDIX

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Washington, D.C. 20544

September 27, 1982

WILLIAM E. FOLEY
Director

JOSEPH F. SPANIOL, JR.
Deputy Director

MEMORANDUM TO ALL:

Judges, United States Courts of Appeal
Judges, United States District Courts
Judges, United States Bankruptcy Courts
Clerks, United States Bankruptcy Courts

SUBJECT:

The Bankruptcy Court System after October 4, 1982 in Absence of Congressional Action.

The Supreme Court's recent decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co., et al,* 102 S. Ct. 2858 (1982) held that the broad grant of jurisdiction to bankruptcy judges under the 1978 Act violates Article III of the Constitution. In applying its decision prospectively, the Court stayed its judgment until October 4, 1982 in order to afford the Congress an opportunity to reconstitute the bankruptcy courts or adopt some other valid means of adjudication, without impairing the interim administration of the bankruptcy laws.

During July and August, both the House and Senate held hearings on this important issue. Earlier this

month, the Executive Committee of the Judicial Conference provided the Congress with its views and offered draft legislation for revision of the current law in order to satisfy the Supreme Court's decision, with a minimum of disruption to the bankruptcy court structure. While it is hoped that the Congress will take affirmative action to remedy the constitutional defects in the bankruptcy law before the stay terminates on October 4, it is possible it may not have time to do so.

Therefore, the following is the view of the Administrative Office of the United States Courts of the status of the bankruptcy law during the transition period ending March 31, 1984 if the Congress fails to act by October 4 and no extension of the stay is granted.

In *Marathon*, the Court found that certain powers assigned to bankruptcy judges by the 1978 Bankruptcy Act could be constitutionally exercised only by an Article III judge. The Court refused to sever the unconstitutional excess and thus struck the Act's assignment of powers to bankruptcy judges in its entirety, effective October 5, 1982.

Marathon does not cause a jurisdictional lapse. The Administrative Office concludes that *Marathon* did not invalidate 11 U.S.C. sections 1471 (a), (b). In addition, sections 404 and 405 of the 1978 Act also vest bankruptcy powers in the district courts as "courts of bankruptcy" until 1984.

The attached rule is an interim measure by which district courts may delegate many of their bankruptcy powers to bankruptcy judges. The authority for this is found in section 105 of the 1978 Act (11 U.S.C. sec. 105), which gives courts of bankruptcy the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," and in Bankruptcy Rule 927, which gives bankruptcy courts the power to adopt "rules governing practice and procedure under the Act." This delegation of power is

consistent with the long tradition of a bankruptcy court consisting of two judicial officers and the clear intent of the Congress to continue a two-officer court of bankruptcy through 1984.

Under the Rule, all bankruptcy matters are initially referred to a bankruptcy judge. [Section b(1) of the Rule.] In proceedings not involving a final judgment in a *Marathon* claim, the bankruptcy judge may enter orders and judgments that become effective immediately, subject to district court review if requested by a party. [Section (c)(2).] With respect to final judgments in *Marathon* claims, the bankruptcy judge prepares recommended findings and conclusions and a proposed judgment. [Section (c)(3).] A district judge then reviews the recommendation and enters a judgment. [Section (c)(5).] Where the bankruptcy judge certifies that circumstances require, an order or judgment entered by a bankruptcy judge will be confirmed by a district judge even if no objection is filed.

The district court will provide expedited review or confirmation of any order, judgment, or proposed judgment where the bankruptcy judge certifies prompt review is necessary.

/s/ William E. Foley
WILLIAM E. FOLEY

Attachment

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Washington, D.C. 20544

December 3, 1982

WILLIAM E. FOLEY
Director

JOSEPH F. SPANIOL, JR.
Deputy Director

MEMORANDUM TO ALL:

Judges, U.S. Courts of Appeals
Judges, United States District Courts
Judges, United States Bankruptcy Courts
Clerks, U.S. District Courts
Clerks, U.S. Bankruptcy Courts

SUBJECT:

Continued Operation of the Bankruptcy Court System after December 24, 1982, in the Absence of Congressional Action

On September 27, 1982, I transmitted by memorandum a model rule and sample order in accordance with the following September 23, 1982 Resolution of the Judicial Conference:

RESOLVED:

That the Conference request the Director to provide each circuit with a proposed rule to take effect October 5, 1982 in the absence of congressional action or extension of the stay, which rule will permit the bankruptcy system to continue without disruption in reliance upon jurisdictional grants remaining in the law as limited by *Northern Pipeline Construction Co. v. Marathon Pipe Line Co. et al.*

My September 27, 1982 transmission was, of course, designed to provide a "contingency approach," as specified in the Conference's Resolution, "in the absence of Congressional action or extension of the stay," *then* scheduled to expire on October 4. As you know, the Supreme Court, on October 4 extended the stay until December 24, because Congress was not able to act before recessing on October 2.

Congress reconvened on November 29, five days ago. While efforts to take action are now being made by the Congress, I believe prudence requires that I again provide "a proposed rule . . . which . . . will permit the bankruptcy system to continue without disruption" should Congress be unable to act—or if the stay is not again extended—by December 24.

In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co., et al.*, 102 S.Ct. 2858 (1982) the Supreme Court found that certain powers assigned to bankruptcy judges by the 1978 Bankruptcy Reform Act could be exercised constitutionally only by Article III judges, that language in the Act conferring unconstitutional authority could not be severed from language conferring other powers, and therefore provided the opportunity for Congress to correct the jurisdictional problem.

The Conference on September 10, 1982, advised Congress of its belief that the Supreme Court decision did not completely invalidate subsections (a) and (b) of section 1471 of Title 28, United States Code, as enacted in section 241(a) of the 1978 Act. In addition, sections 404 and 405 of that Act expressly vest bankruptcy powers in the *district* courts as "courts of bankruptcy" *until April 1, 1984*. The attached model rule has been formulated in reliance upon the remaining valid elements in the 1978 Act.

The attached model rule is intended to be an interim measure, by which district courts may delegate many of their bankruptcy powers to bankruptcy judges. The au-

thority for that delegation is found in section 105 of the 1978 Act, which gives courts of bankruptcy the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," and in Bankruptcy Rule 927, which gives bankruptcy courts the power to adopt "rules governing practice and procedure under the Act."

Under the model rule, all bankruptcy matters are initially referred to a bankruptcy judge. [Section b(1) of the Rule.] In proceedings not involving a final judgment on a *Marathon* claim, the bankruptcy judge may enter orders and judgments that become effective immediately, subject to district court review if requested by a party. [Section (c)(2).] With respect to final judgments in *Marathon* claims, the bankruptcy judge prepares recommended findings and conclusions and a proposed judgment. [Section (c)(3).] A district judge then reviews the recommendation and enters a judgment. [Section (c)(5).] Where the bankruptcy judge certifies that circumstances require, an order or judgment entered by a bankruptcy judge will be confirmed by a district judge even if no objection is filed.

The district court will provide expedited review or confirmation of any order, judgment, or proposed judgment where the bankruptcy judge certifies prompt review is necessary.

/s/ William E. Foley
WILLIAM E. FOLEY

Attachments: Model Rule
Sample Order

RULE

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, —— U.S. ——, 102 S.Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of Public Law 95-598; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of bankruptcy papers

The court of bankruptcy constituted by § 404 of Public Law 95-598 shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title 11 shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall

be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt—

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment;

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or

(D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3)(A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims against the estate; orders in respect to obtaining credit; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine dischargeability of particular debts; proceedings to object to the discharge; proceedings in respect to the confirmation of plans; orders approving the sale of property where not arising from proceedings resulting from claims brought by the estate against parties who have not filed claims against the estate; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall sub-

mit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (e) 2A and B of of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2) (A) A district judge shall review:

(i) an order or judgment entered under paragraph (d) (2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;

(ii) an order or judgment entered under paragraph (d) (2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and

(iii) a proposed order or judgment lodged under paragraph (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (d)(2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise the issue of whether any proceeding is a related proceeding prior to the time of the entry of the order or judgment of the district judge after review.

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a judge of the district court, the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of Public Law 95-598

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 and limited by SEC. 405(d) of the Act, to the extent that such Title and Rules are not

inconsistent with the holding of Northern Pipeline Construction Co. v. Marathon Pipe Line Co., —— U.S. ——, 102 S.Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.

Sample Order

Acting pursuant to the authority vested in the Judicial Council by 28 U.S.C. § 332(d), the Judicial Council of the ———— circuit concludes that the uniform effective and expeditious administration of justice within this circuit requires that the attached rule for the administration of the bankruptcy system in this circuit be adopted by the district courts of this circuit pursuant to 11 U.S.C. § 105, and it is so ordered.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Washington, D.C. 20544

December 22, 1982

WILLIAM E. FOLEY
Director

JOSEPH F. SPANIOL, JR.
Deputy Director

MEMORANDUM TO ALL:

Judges, United States Court of Appeals
Judges, United States District Courts
Judges, United States Bankruptcy Courts
Clerks, United States District Courts
Clerks, United States Bankruptcy Courts

SUBJECT:

Clarification of Proposed Interim Bankruptcy Rule Transmitted by Memorandum of December 3, 1982

Since issuance of a proposed interim bankruptcy rule on December 3, 1982, I have received a number of inquiries in respect to the difference between the rule transmitted on September 27, 1982 and the later rule. This memorandum is to advise you that the proposed bankruptcy rule transmitted on December 3 supercedes and should be substituted for the rule which was transmitted on September 27, 1982. The rule transmitted on December 3 differs from the previous one in the following essential respects:

1. The rule redefines and addresses in greater detail the types of proceedings in which a bankruptcy judge may or may not issue a final order or judgment. Paragraph (d) (3) (A), (B).

2. The rule places a time limit upon the right of parties to raise the issue of whether any proceeding is a related proceeding as defined in the rule. Paragraph (e)(4).

3. The rule provides for the continued application of local district court rules and local bankruptcy court rules. Paragraph (f).

4. The rule makes clear that the legal and administrative structure established by the Bankruptcy Rules and Title IV of Public Law 95-598 continues in full force and effect. Paragraph (g). See also paragraph(b) in respect to filing of district court judgments and paragraph (e) in respect to procedure for district court review.

5. The new rule specifically recognizes the continued existence of the Clerk of bankruptcy court as a separate office pursuant to Sec. 404(e) of Public Law 95-598. Paragraph (a).

The following typographical corrections should be made in the December 3 rule before it is adopted locally:

1. In the first line of paragraph (b), "bankruptcy court" should read "court of bankruptcy."

2. In the third line of paragraph (e)(3), "paragraph (d)(2) should read "paragraph (e)(2)."

3. In the third line of paragraph (e)(4), "order of judgment" should read "order or judgment."

William E. Foley